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TAGS: [KJUS](#) [EFIN](#) [PREL](#) [MC](#)  
SUBJECT: U.S.-MACAU INTERACTIONS EXPANDING, OPPORTUNE  
MOMENT TO NEGOTIATE MLAA

REF: HONG KONG 4735

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SUMMARY AND COMMENT  
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[1](#)1. (SBU) SUMMARY AND COMMENT. U.S.-Macau interactions are and will continue expanding rapidly as U.S. investment pours into Macau -- US\$2.5 billion in 2006, much of it in the sensitive gaming and entertainment industries. Increasing interactions between the United States and Macau will generate both more opportunity and greater necessity for law enforcement cooperation. While U.S. law enforcement agencies have already stepped up cooperation, exchanges and training with their Macau counterparts (see reftel), negotiating a Mutual Legal Assistance Agreement (MLAA) with the Macau Special Administrative Region Government (MSARG) will provide an important tool to formalize and expand judicial cooperation.

[1](#)2. (SBU) The extremely rapid expansion of Macau's gaming and entertainment industries, combined with Macau's traditionally loose regulatory environment, the historical presence of organized crime and increased levels of PRC participation in the Macau phenomenon imply a situation potentially ripe for exploitation by criminals. Concern also exists that business/economic development in Macau (a great deal of which is generated by U.S. investment in Macau's gaming, convention and tourism sectors) may be outpacing the MSARG's capabilities to effectively regulate, oversee and support.

[1](#)3. (SBU) With the approval of the PRC Central Government, the Macau Government enacted a new law on November 1, 2006 that provides Macau the authority to undertake negotiations with foreign jurisdictions toward establishing agreements facilitating mutual legal assistance. The MSARG government has indicated at authoritative levels its willingness to explore such an undertaking with the United States.

[1](#)4. (SBU) Consulate General Hong Kong, including the law enforcement agencies present here, recommends that the Departments of Justice and State review the potential benefits of negotiating an MLAA with the MSARG. (In para 11, we cite several recent cases in which a U.S.-MSARG MLAA would

have been useful.) No such negotiation is easy, but in Macau's case the benefits are likely to be substantial. Given that one barrier to better law enforcement cooperation with Macao is the MSARG's lack of international legal expertise and inefficient interagency cooperation, we believe that the mere act of getting organized for such a negotiation with the United States may spur improvements in MSARG responsiveness and law enforcement efficiency. END SUMMARY AND COMMENT.

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Background  
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15. (U) Since its reversion to the People's Republic of China (PRC) in 1999, the MSARG has not engaged actively in international bilateral agreements on mutual legal assistance in criminal matters; to do so would have risked Macau entering into international agreements inconsistent with its Basic Law, a mini-constitution hammered out prior to reversion of sovereignty from Portugal to China. Under Article 13 of Macau's Basic Law, the PRC central government has authority over extradition and other agreements on legal cooperation. The PRC allowed some exceptions for the MSARG: the Sino-Portuguese Joint Liaison Group in 1999 approved a standard agreement on the "transfer of sentenced persons." The MSARG and the Government of Portugal signed an "Agreement on the Transfer of Sentenced Persons" on 7 December 1999. The Government of Portugal and MSARG also signed a Mutual Legal Assistance Agreement on 17 January 2001. The MSARG and the Hong Kong Special Administrative Region signed an "Agreement on the Transfer of Sentenced Persons" on 25 May 2005.

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Legislation Allows MSARG to Negotiate MLAA  
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16. (U) On July 13, 2006, the MSARG passed new legislation allowing and regulating international mutual legal assistance on criminal matters. MSARG published the law on July 24, 2006 and the law became effective on November 1, 2006. The MLAA Law states that the MSARG, with the assistance and authorization of the PRC government, can finalize mutual legal assistance agreements (MLAAs) with countries (excluding the PRC) and territories. These MLAAs may include areas such as: detaining fugitive offenders, transferring cases of criminal prosecution, transferring prosecuted persons, executing criminal sentences and other forms of judicial cooperation in criminal matters.

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MSARG Senior Officials View U.S.-Macau MLAA Positively  
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17. (SBU) In discussions between ConGen Hong Kong and the MSARG International Legal Affairs Office in December 2005 regarding the MSARG's pending MLAA legislation, Macau officials told us that the MSARG hoped to conclude MLAAs with six countries: the United States, Canada, the Philippines, Thailand, Portugal (this likely would augment or replace the 2001 agreement) and Brazil. The MSARG chose these six countries due to the high number of their nationals in Macau or the high number of Macau nationals in those jurisdictions.

18. (SBU) In November 2006, Economic/Political Chief spoke to Florinda Chan, the Secretary for Administration and Justice (No. 2 in Macau's government) and Ms. Chio Iek, an advisor to the Director of the Public Prosecutions Office. E/P Chief mentioned that the USG had noted the passage of this new law and its effective date November 1, 2006 and asked whether it could provide a basis for Macau to enter into expanded legal cooperation with other countries, through the negotiation of MLAAs or other instruments. Secretary Chan said that Macau definitely wants to expand its cooperation with other

countries to better deal with transnational crime and also to resolve issues of Macanese being held in prisons in other jurisdictions, such as Hong Kong or Southeast Asia. She said that Brazil, Thailand and the EU had already approached Macau to explore the possibility of negotiating such agreements. Macau will have to vet each of these decisions with the Central Government in Beijing; once Beijing approves Macau entering such negotiations, however, the Macau government will carry out the negotiations itself (maintaining close coordination with Beijing, of course).

¶9. (SBU) Chan remarked on the desirability of the U.S. and Macau expanding legal cooperation and would "welcome a request" from us to explore this possibility. Chio - who in fact is a PRC official apparently seconded to the Macau Prosecutor's office - said the point of the new law was to provide a mechanism for Macau to expand legal cooperation with other jurisdictions. She also made positive, though vague, comments about expanding the U.S.'s legal cooperation with Macau and welcomed further discussions about that. So, while neither the USG nor the MSARG have made firm commitments, the MSARG at authoritative levels does seem positively disposed to discussing whether it would be useful to try to reach an agreement between the United States and Macau.

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U.S. - Macau Interactions (Particularly Economic) Expanding  
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¶10. (U) Additionally, the USG's interest in robust engagement with the MSARG is expanding. ConGen Hong Kong is increasing its interactions/profile in Macau in the commercial/economic, law enforcement, public outreach and American Citizen services areas, among others. Many of these areas of endeavor have the potential to generate legal

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issues. For Example:

--U.S. private sector investment is growing rapidly in Macau, particularly in the gaming, tourism and convention industries.

--In 2006, U.S. investment in Macau is estimated to reach US\$2.5 billion and in the 3-year period from 2006 - 2008 likely will surpass US\$8 billion.

--Sands opened a casino in Macau in May 2004.

--Wynn Resort opened a resort/casino in Macau in Sept 2006.

--MGM is building a resort/casino in Macau that is scheduled to open in 2007.

--The Sands Venetian is building a 3000-room resort/casino/convention center that is scheduled to open in ¶2007.

--Sands Venetian continues to develop Macau's COTAI Strip and plans a potential total investment of US\$11 billion. The flagship will be the Sands Venetian. Sands will build eleven other hotels on the COTAI Strip as part of its overall development plans that ultimately will be managed by renowned hotel management firms such as InterContinental, Holiday Inn, Four Seasons, Starwood, Sheraton, Hilton, Conrad, Fairmont, Raffles, Shangri La, and St. Regis.

--The number of U.S. citizens living/working in Macau has increased substantially, from an estimated 700 a year ago to an estimated 1,400 now, and continues to grow along with the increased U.S. investment.

--In the first nine months of 2006, 110,000 U.S. Tourists visited Macau, equaling the total number of U.S. Tourists that visited Macau in 2005. U.S. tourism to Macau in the future is forecast to rise along with expected large

increases in total tourism numbers. In 1999, 7.4 million tourists visited Macau; that number increased to 20 million in 2006 and is expected to reach 38 million by 2010.

--The MSARG is cooperating with the USG in some law enforcement areas. Specifically, the Macau Monetary Authority has been providing information/documents to the U.S. Treasury Department in the ongoing investigation of Banco Delta Asia.

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Cases Where an MLAA Would Have Been Useful  
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¶11. (SBU) Below are examples of recent cases where an MLAA could have helped USG authorities obtain relevant information or prosecute cases in the United States:

--Banco Delta Asia - The investigation into North Korean money laundering of funds derived from illegal activities through Macau-based Banco Delta Asia (BDA). An MLAA could have significantly eased the process for U.S. Treasury officials to gain access to BDA accounts and receive information from the MSARG, for example, an audit report on BDA by the accounting firm Ernst and Young.

--Internal Revenue Service-Criminal Investigation Division (IRS - CID) and the Federal Bureau of Investigation (FBI) are jointly working on a narcotics related money laundering investigation involving about US\$2 million in currency that flowed through a nominee account at Banco Delta Asia (BDA) in Macau. In January 2006, IRS-CID submitted a law enforcement request to the Judiciary Police to seek bank records from BDA that would document the transaction, but to date has not received the requested information. An MLAA could theoretically provide impetus for Macau to respond and provide authenticated evidence that could be used in U.S. courts.

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--The U.S. Department of Justice, on behalf of the FBI, had submitted a request to Macau in November 2005, seeking bank records. However, Macau directed USDOJ to submit the request to the PRC Ministry of Foreign Affairs in Beijing. The PRC Ministry of Foreign Affairs subsequently directed USDOJ to submit the request back to Macau. Macau authorities obtained the requested bank documents and sent them back to the PRC Ministry of Foreign Affairs. The PRC Ministry of Foreign Affairs forwarded the documents to the U.S. Embassy in Beijing, who then sent them to the U.S. Consulate in Hong Kong. This indirect process took over six months. An MLAA between the United States and Macau would significantly clarify procedures for requesting and receiving such evidence.

--In July 2002, DEA and several other international law enforcement agencies began investigating a Taiwan-based drug organization led by Chen Kuang-hua, which had been smuggling heroin and methamphetamine throughout Asia, Australia, Canada and the U.S. As a result of these investigations, the U.S. and Hong Kong issued provisional arrest warrants for Chen based on an indictment in Guam. An MLAA would have permitted MSARG to do likewise. The Macau Judiciary Police provided extensive assistance throughout this investigation, including critical evidence related to a drug transaction that occurred in Macau and Guam. Given that no MLAA exists, this evidence could not be used in the Guam proceedings.

--Since 1998, DEA along with authorities from Macau, Hong Kong, Canada and Australia have investigated the activities of the LOI Chon-meng international drug trafficking organization, active in trafficking methamphetamine and heroin. The Macau Judiciary Police provided extensive assistance, including a large amount of evidence obtained from their financial investigation of this syndicate.

Without an MLAA, this critical financial evidence cannot be used in U.S. court, making a U.S. indictment highly unlikely.

¶12. (SBU) ConGen Hong Kong's DEA Office also adds that drug traffickers use Macau as a meeting spot to conduct drug-related negotiations, money transfers, etc., as well as an entertainment venue while "conducting business." The DEA is also interested in money laundering in Macau and its nexus to drug trafficking. Having an MLAA will facilitate requesting and obtaining financial records and other official records (hotel bill, telephone call lists, etc.) for potential court cases which the DEA might be pursuing.  
Cunningham